ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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SUMMARY

In this phase of its local competition proceeding, the Commission should adopt rules to prevent discriminatory administration of numbering resources and to ensure that all interconnecting carriers are provided with meaningful notice of technical changes to incumbent LEC networks. These comments address specific steps the Commission should take to achieve those goals.

First, the Commission should prohibit the use of overlays to relieve area code exhaust until permanent service provider number portability is implemented. Number portability is the only way to prevent the anticompetitive effects of overlays on new entrants. Moreover, almost all of the recent conflicts in area code relief planning have arisen because of incumbent LEC insistence on overlays, over the objections of new entrants and others.

Second, the Commission should adopt rules to prevent discriminatory policies in central office code assignment. The comments show that discrimination continues and is likely to persist until central office code assignment is in neutral hands. The Commission also should prohibit discriminatory "code opening" charges levied by incumbent LECs.

Finally, the rules governing notice of technical changes must be designed to provide timely notice of all relevant information to all interconnecting carriers. A modified version of the Computer III schedule can be used to specify the timing of disclosures. The Commission should resist LEC efforts to limit the information disclosed to prevent incumbents from providing insufficient data to respond to a change. Finally, the Commission should require direct disclosure to interconnecting carriers, rather than relying on the industry forum process. Industry fora were not designed to accommodate disclosures of this sort and would not disseminate the required information efficiently or effectively.

TABLE OF CONTENTS

		Page
SUMMARY		i
I.	INTRODUCTION	1
II.	THE COMMISSION SHOULD BAR IMPLEMENTATION OF AREA CODE OVERLAYS UNTIL NUMBER PORTABILITY IS AVAILABLE	2
III.	THE COMMISSION SHOULD ADDRESS THE SIGNIFICANT OPPORTUNITIES FOR DISCRIMINATION IN THE CENTRAL OFFICE CODE ASSIGNMENT PROCESS	10
IV.	THE RULES GOVERNING NOTICE OF TECHNICAL CHANGES SHOULD ENSURE PROMPT DISCLOSURE TO ALL INTERESTED PARTIES	11
IV.	CONCLUSION	14

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1/] These reply comments address issues relating to numbering administration and requirements for notice of changes in incumbent local exchange carrier networks under new Section 251 of the Communications Act.

I. INTRODUCTION

The comments confirm the importance of the issues addressed in this phase of the proceeding to the development of local telephone competition. Without equitable access to numbering resources, as required by Section 251(e), competition cannot succeed.[2/] Consequently, the Commission must adopt rules that prohibit the use of area code overlays until the competitive concerns they raise are addressed by the implementation of permanent

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1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182, rel. Apr. 19, 1996 (the "Notice").

2/ 47 U.S.C. § 251(e).

number portability. The Commission also must ensure that discriminatory central office code assignment policies are prohibited.

Similarly, without effective requirements for notification of changes in incumbents' networks, interconnecting carriers may be unable to provide service to their customers. The Commission therefore should adopt requirements (1) that include specific deadlines for disclosure, modeled on the Computer III disclosure regime; (2) that require disclosure of the specific information necessary to respond to incumbents' network changes; and (3) that are targeted to the entities that need the information.

II. THE COMMISSION SHOULD BAR IMPLEMENTATION OF AREA CODE OVERLAYS UNTIL NUMBER PORTABILITY IS AVAILABLE. (Notice Section II.E)

Until recently, area code relief was not a matter of significant controversy within the telecommunications industry. The comments show, however, that direct Commission guidance regarding permissible area code relief plans is necessary to prevent incumbents from using area code relief to disadvantage competitors in the telecommunications marketplace. Consequently, the Commission should adopt rules that prohibit the use of area code overlays until such time as true service provider local number portability is available in any area where an overlay is planned.

The comments and other recent events highlight the need for specific Commission action in this area. Almost simultaneously with the deadline for comments on numbering issues in this proceeding, the Commission also issued a public notice of a petition for declaratory ruling from the Public Utility Commission of Texas, which has requested

permission to implement wireless-only overlays in Dallas and Houston.[3/] At the same time, several commenters in this proceeding have either urged the Commission to explicitly favor overlays as the solution in area code relief matters or to permit the use of overlays without any conditions.[4/]

The Commission should resist the parties that support overlays and instead should adopt an explicit policy that disfavors the use of overlays for area code relief. As the comments of Cox and other parties showed, area code overlays create significant competitive disadvantages for new entrants that can be ameliorated only by the implementation of true number portability. At the same time, there is no evidence to support the purported advantages of area code overlays. In this critical period for the development of local telephone competition, permitting the use of area code overlays would be a mistake.

Area code overlays create competitive disadvantages for new entrants because the new entrants would be required to obtain almost all of their telephone numbers from the new area code, while incumbents would retain control of many numbers from the old area code.[5/]

3/ See Petition for Expedited Declaratory Ruling, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas (filed May 10, 1996) ("Texas Petition"). Texas also has filed a petition for review on the same issues.

4/ See, e.g., Comments of Paging Network, Inc. ("PageNet") at 28-30; Comments of SBC Corp. at 11.

5/ See Comments of Teleport Communications Group at 4-8. Incumbents could avoid using numbers in the new area code for many of their new customers because of the ongoing churn in telephone number usage as old customers leave the area or end their telephone service for other reasons. Incumbents also could increase the fill rate of their existing NXX codes, further reducing the need for numbers from the new area code. New entrants would not have these opportunities.

Thus, the customers of new entrants would be relegated to an unfamiliar area code that would require most callers to dial extra digits to reach them.

The disadvantages of overlays are exacerbated by service-specific overlays, such as the wireless-only overlays proposed in Texas. In particular, wireless-only overlays could prevent PCS and cellular from providing meaningful competition to landline telephony, contrary to the Commission's vision for the development of CMRS services.[6/] In addition, by singling out wireless services as different from landline services, a service-specific overlay could make it much more difficult for a wireless provider to convince customers that wireless service is, in fact, a good substitute for traditional landline telephony.

Nevertheless, some commenters support the use of overlays, claiming that consumers do not like splits or that it is difficult to determine appropriate boundary lines as area codes get smaller. The Commission should reject their claims as unsupported by the facts.

First, the Commission should recognize that every analysis of customer opinion shows that consumers prefer area code splits to overlays. While some carriers argue that splits are more disruptive to consumers than overlays, it is apparent that consumers do not feel that way.[7/] Surveys in Connecticut, Oregon and California have shown strong preferences for splits.[8/] The Public Utility Commission of Texas also has found that customers prefer splits,

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6/ See Comments of Vanguard Cellular Systems, Inc. at 5-7; see also Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 10 FCC Rcd 10665 (1995).

7/ See, e.g., Comments of PageNet at 18.

8/ See, e.g., Reply Comments of Cox Enterprises, Inc., IAD File No. 94-104, filed Feb. 27, 1995, at Exhibit 1 (Connecticut survey).

even considering the costs to consumers of changing area codes.[9/] Customers are particularly concerned about the elements of overlays that make telephone service more confusing, such as 10-digit dialing and the possibility of having customers with different area codes next door to each other or in the same apartment building. These consumer preferences are a powerful reason for the Commission to adopt rules that favor splits rather than overlays.

The other supposed reason to favor overlays is that there are difficulties in setting split boundaries.[10/] In practice, any difficulties in setting boundaries result mostly from artificial constraints on the "acceptable" relief plans that are imposed by Bellcore and that the Commission should eliminate. The most important of these constraints is a requirement that the lives of the two area codes that result from a split should be roughly equal. As described in Cox's initial comments, this is not a significant concern so long as the region with the shorter life also retains the old area code.[11/] Eliminating a requirement for "balanced" lives greatly eases the process of determining boundaries, especially in areas that consist of an urban center and nearby suburban or rural areas. Unbalanced lives even may be viewed as desirable because they will lengthen the time before the new area code has to be relieved again.[12/]

9/ See Texas Petition, Attachment A at 7

10/ See generally Comments of PageNet at 10.

11/ Comments of Cox at 6 n.12.

12/ Indeed, there were suggestions during the public meetings in rural parts of the 619 area code that it would be desirable to modify the relief plan to increase the life of the new area code.

Moreover, most of the problems in the area code relief planning process over the past several years have arisen not from the difficulties of implementing splits but from the insistence of incumbent LECs on the use of overlays Almost every instance of litigation over area code relief — in Illinois, California. Georgia, Florida, Missouri, Minnesota, Texas and Maryland — occurred because the incumbent LEC proposed to implement an overlay over the objections of its prospective competitors.[13/] Where splits have been mandated, split boundaries have been determined in a matter of days or weeks after the overlay was rejected or even simultaneously with the decision to reject the overlay[14/]

In other words, the problem is not the difficulty of determining boundaries, but LEC desires to press for outcomes that are competitively beneficial to them. This conclusion is bolstered by the state decisions in Illinois and California finding that overlays will hurt new

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13/ In California, at least five relief plans have been the subject of litigation because Pacific Bell and GTE refused to support any relief mechanism but an overlay.

14/ See, e.g., AirTouch Comms. v. Pacific Bell, Case Nos. 94-09-058, 95-01-001 (Cal. Pub. Utils. Comm. Oct. 18, 1995) at 2-3 (describing process of determining boundary of 310/502 split); Southern Bell Telephone and Telegraph Company Petition for Approval of Numbering Plan Area Relief for 404 Area Code, Docket No. 5485-U (Ga. Pub. Serv. Comm. Apr. 27, 1995) at 5-6. In the case of the 310 area code, in one of the most densely populated areas of the country, it took two meetings over the span of less than two weeks to determine a consensus boundary for the split between 310 and 562. This process was greatly aided by a determination that the lives for the two area codes did not need to be balanced.

entrants.[15/] It also is evident from LEC efforts to urge the adoption of overlays even in regions where there is no rationale for them.[16/]

In this context, it is evident that the Commission should reject PageNet's suggestion that the "default" relief mechanism should be an overlay.[17/] PageNet's argument is premised on a concern that the difficulties in deciding on relief plans jeopardize the relief planning process and result in discrimination against wireless carriers, but this problem exists only because incumbents insist on overlays.[18/] The PageNet proposal, by implementing overlays as a default, would exacerbate the problem because incumbents would have no incentive to agree to a split.[19/] If, on the other hand, the option of implementing anticompetitive overlays were removed, then it would be relatively easy for all parties to the area code relief planning

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15/ AirTouch Comms. v. Pacific Bell, Case Nos. 94-09-058, 95-01-001 (Cal. Pub. Utils. Comm. Aug. 11, 1995) at 22 (the "310 Decision"); Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code, Docket No. 94-0315 (Ill. Commerce Comm. Mar. 3, 1995) (the "708 Decision"). Even though the Texas PUC wants to impose a wireless-only overlay, it recognizes the competitive damage an overlay causes. Texas Petition, Attachment A at 21.

16/ See Comments of Cox at 5 (describing Pacific's support for an overlay in the 619 area code).

17/ Comments of PageNet at 9-11.

18/ Id. at 6. PageNet also may be motivated to support overlays because it is the largest incumbent paging operator in the country, with more than 6.7 million subscribers. PageNet thus has an incentive to relegate new narrowband CMRS providers, such as the winners of the Commission's narrowband PCS auctions, to overlay area codes.

19/ While PageNet suggests that an overlay could be turned into a split after it was implemented, this is a not a real option. Id. at 7. In practice, once a relief option has been implemented, it is very difficult to undo it. PageNet's own comments include examples of the difficulties of changing relief methods after implementation has begun. Id. at 12-13, 15-16 (describing implementation issues in Chicago and Texas).

process to reach agreement, as has been demonstrated again and again across the country.[20/] Similarly, once the competitive concerns raised by overlays are addressed (in particular, through the implementation of permanent service provider local number portability), it is likely that incumbents will propose overlays only when they are justified, so that overlay proposals will not create the controversies that today can paralyze the relief planning process.

Rather than adopting PageNet's proposal, the Commission should prohibit the use of area code overlays until the anticompetitive effects of overlays are eliminated.[21/] The anticompetitive effects of overlays are well documented, so the Commission cannot permit them to be implemented in the current environment without violating the statutory requirement to "make numbers available on equitable basis."[22/]

The chief tool the Commission can use to address the anticompetitive effects of overlays is to require the implementation of permanent number portability before area code relief planners can approve an overlay. There is general agreement among all representatives of new entrants that number portability is necessary before overlays can be competitively

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20/ See supra note 14 and accompanying text.

21/ Although PageNet's overlay proposal should be rejected, Cox agrees that it is critical for the area code relief planning process to begin in time for serious consideration of all alternatives and for ample public notification of area code changes. Consequently, Cox supports PageNet's suggestion that numbering administrators should be required to begin the relief planning process when 200 NXX codes remain in an area code. Comments of PageNet at 9. Given the heavy use of NXX codes in some areas of the country, the Commission may wish to consider requiring relief planning to begin when 250 codes remain.

22/ 47 U.S.C. § 251(e)(1). See also Comments of Teleport Communications Group at 5; Comments of MFS Communications Company, Inc. at 3; Comments of MCI at 9-14.

neutral.[23/] This conclusion is consistent with the findings of State commissions across the country.[24/] Moreover, because the 1996 Act requires the implementation of permanent number portability, it is likely that this condition will be met in most populated areas within the next few years.[25/] It also is critical to prohibit relief planners from proposing overlays — not just implementing them — until after portability is available. Otherwise, relief planning could be based on projected dates for number portability that incumbent LECs would have no incentive to meet.

The Commission also should consider other preconditions to the use of overlays, such as mandatory 10-digit dialing.[26/] It should be emphasized, however, that 10-digit dialing, customer education and other safeguards do not eliminate the anticompetitive aspects of area code overlays. Only number portability will achieve that goal. At the same time, there is no Commission action that could remedy the discriminatory and anticompetitive effects of service-specific overlays, such as those proposed in Texas.[27/] Consequently, service-specific overlays should be prohibited entirely.

23/ See, e.g., Comments of Cox at 3; Comments of National Cable Television Association at 10.

24/ See 310 Decision at 55; 708 Decision at 20-21.

25/ In some states, highly ambitious number portability plans could be implemented before the end of 1997, although it is likely that it will take longer to implement portability in most areas.

26/ See Comments of MCI at 9-14.

27/ See Comments of Vanguard Cellular Systems, Inc. at 5-6; Comments of PageNet at 23-24. Curiously, while PageNet describes the discriminatory impacts of service-specific overlays, it does not recognize the equally significant effects of all-service overlays on new entrants.

III. THE COMMISSION SHOULD ADDRESS THE SIGNIFICANT OPPORTUNITIES FOR DISCRIMINATION IN THE CENTRAL OFFICE CODE ASSIGNMENT PROCESS. (Notice, Section II.E.)

As with area codes, incumbent LECs argue there is no need for Commission intervention in the assignment of central office codes.[28/] In practice, however, and despite the existence of "neutral" central office code assignment guidelines, significant potential for discrimination against new entrants remains. Consequently, the Commission should take specific actions to prevent ongoing discrimination in central office code assignments.

Incumbent LECs are content with the central office code assignment process because they still control it. Their needs are met because their own employees are assigning the codes. Comments of other parties, however, show that there is considerable discrimination. For instance, both Omnipoint and PageNet describe discriminatory assignment activities that have hindered wireless carriers in their efforts to obtain central office codes.[29/] These activities can occur because, as Teleport points out, there is nowhere in the country where central office codes are assigned by an impartial entity.[30/] Until an impartial entity is responsible for assigning central office codes, specific Commission rules that prevent discrimination, as outlined in Cox's comments, are necessary.[31/]

28/ See, e.g., Comments of SBC Corp. at 12-13.

29/ Comments of Omnipoint at 1; Comments of PageNet at 12.

30/ Comments of Teleport at 2.

31/ Comments of Cox at 8-9. These rules also should prevent the assessment of "code opening" charges by incumbent LECs. Id. at 9.

The Commission also should accelerate the shift of central office code assignment responsibilities from incumbent LECs to a neutral administrator. This is the most effective way to prevent discrimination in the assignment process, because a neutral administrator will apply the central office code assignment guidelines fairly, rather than with an eye towards the incumbent LEC's interests. While some LECs suggest that they should maintain control of central office code assignment because special local expertise is necessary, that is not the case.[32/] For instance, the "special" knowledge that SBC claims is necessary, such as the names of authorized carriers in a state and their service areas, is readily available from any number of sources and, in any event, is not particularly difficult to master.[33/] When balanced against the significant potential for continuing discrimination against new entrants and wireless carriers, the possibility that some local knowledge will be unknown to a neutral administrator hardly forms an insurmountable barrier to a swift transition from the current regime.

IV. THE RULES GOVERNING NOTICE OF TECHNICAL CHANGES SHOULD ENSURE PROMPT DISCLOSURE TO ALL INTERESTED PARTIES. (Notice Section II.B.4.)

There is considerable agreement about how some elements of the requirement for notice of technical changes in incumbent LEC networks should be implemented, but that agreement should not obscure the importance of the specific terms of the notification

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32/ Comments of SBC Corp. at 11.

33/ Some of the information that SBC says is necessary, such as the scope of local calling areas, is irrelevant under the current central office code assignment guidelines. Id. at 12.

requirement. While many commenters agree on the timing of the notification, the Commission should not ignore the equally important issues of how notice will be provided to interconnecting carriers and what information will be provided. In particular, the Commission should not rely on the industry forum process, which will not provide the notice that the 1996 Act requires.

First, the comments demonstrate considerable support for requiring network disclosures to be made on a schedule modeled on the disclosure regime the Commission adopted in its Computer III proceeding.[34/] As Cox and others demonstrated, this regime provides the minimum notice necessary to permit interconnecting carriers to make any necessary adjustments to their networks.[35/] It also is important that disclosures of pending changes be made at the outset of interconnection negotiations with new entrants, to prevent new entrants from being blindsided by changes that were announced before negotiations began.

The Commission also should adopt requirements for the information to be included in the notice. While it is not necessary in all cases to specify the particular equipment being purchased or other details that have no impact on interconnecting networks, it is insufficient for an incumbent LEC merely to announce that it will be making a change.[36/] Rather, the

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34/ See, e.g., Comments of Cox at 10-11; Comments of GTE at 4-5; Comments of Teleport at 11.

35/ Comments of Cox at 10-11; Comments of Teleport at 11.

36/ Comments of Northern Telecom (arguing that proprietary information should not be disclosed). Cox agrees that truly proprietary information that does not affect interconnection need not be disclosed. To the extent that a change has an effect on the physical elements or quality of the interconnection arrangements, however, all relevant

disclosure must be sufficient for the interconnecting carrier to know (1) how its existing technical interconnection arrangements will be affected; and (2) how the format and content of information passed between the interconnected networks will change. Any lesser disclosure will not be sufficient to meet the Congressional intent to require notification of any "changes that would affect the interoperability of [interconnecting] facilities and networks."[37/]

Finally, the Commission should not limit disclosure to industry fora or other venues that may not involve all affected parties.[38/] While disclosure to industry fora may be convenient, it is likely to be ineffective. As Cox noted in its initial comments, many entities do not participate in the industry forum process, including many incumbent LECs.[39/] If the Commission adopts a rule that permits an incumbent LEC to meet its obligations solely by disclosing technical changes to an industry forum, many companies that do not now participate would be forced to become involved in that forum. Alternatively, the selected forum might be forced to adopt mechanisms to notify non-participants of technical changes reported by forum participants. Either of these choices is inefficient and would not assure that all interested parties receive notification. It would be much simpler for the Commission

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information must be disclosed to prevent adverse effects on interconnecting networks. There is no justification for deeming such information to be proprietary.

37/ 47 U.S.C. § 251(c)(5).

38/ See Comments of Telecommunications Resellers Association at 12; Comments of GTE at 7.

39/ Comments of Cox at 11.

to require direct notification of interconnecting carriers, as proposed in Cox's comments, than to place the burden of notification on the industry forum process.[40/]

IV. CONCLUSION

For all of these reasons, Cox respectfully requests that the Commission adopt rules in accordance with its comments and these reply comments.

Respectfully submitted,

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40/ Id.

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 3rd day of June, 1996, I caused copies of the foregoing "Reply Comments of Cox Communications, Inc." to be served via hand-delivery, to the following:

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